subject to persecution upon her return under 8 USC 1253(h) now 8 USC 1231(b)(3).

The Petitioner would claim that his status is analogous to that of the Petitioner in *Ananeh-Firempong*. He has documented that his relatives have suffered persecution under the successor regime. He is from the region Equator, that of the former president Mubuto. He is from a family of professionals and is himself highly educated (electrical engineering). These factors make him a target for persecution from a suspicious successor regime. While the government would point to the fact that Department of State reports indicate that family members of former highly placed members of the former regime are not being persecuted, country conditions reports from the Department of State can be countered by a showing of specific danger to the Petitioner. *Galius v. INS,* 147 F.3d 34 (1st Cir. 1998).

**II. The threat of harm presented by the Petitioner justifies that it is more likely than not that he would be tortured should he return to DRC.**

Torture is defined as "the imposition of severe pain or suffering, either physical or mental, by or at the behest of a public official or one acting in an official capacity. 8 CFR 208.18(a)(1). The possibility of torture must be more likely than not. 8 CFR 208.16. The Petitioner has presented evidence that members of his class of persons, former members of the MPR party have been persecuted by the successor government. He has also presented evidence that the wife of his cousin, Imunu Ingulu was detained by the security police and tortured to determine his whereabouts. Family members of the Petitioner report persecution to themselves and to others by the government.

## CONCLUSION

The Petitioner claims that he has presented evidence and legal reasoning that justifies a finding of a clear probability of persecution and a clear probability of torture should he return to DRC. He claims that the evidence was so compelling that no reasonable factfinder could fail to find the requisite fear of persecution. *Elias-Zacarias v. INS,* 502 U.S. 478, 483-484 (1992).

Thereby the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

Bokole Elongo Mompongo
*Pro se*

## APPENDIX A

## UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

**No. 04-1481**

**[Filed May 5, 2005]**

Bokole Elongo Mompongo, Petitioner,

v.

Alberto Gonzales, Attorney General of the United States, Respondent.

On Appeal From Petition for Review of an Order of the Board of Immigration Appeals

Before LOKEN, Chief Judge, RILEY and SMITH, Circuit Judges

### OPINION

RILEY, Circuit Judge.

Bokole Elongo Mompongo (Mompongo), a native and citizen of the Democratic Republic of Congo (DRC), petitions for review of a decision of the Board of Immigration Appeals (BIA) affirming without opinion the Immigration Judge's (IJ)

decision denying Mompongo's application for asylum, withholding of removal, and protection under the Convention Against Torture (CAT). We dismiss Mompongo's asylum claim, because we lack jurisdiction to review the decision that the asylum application was untimely. On the merits of Mompongo's requests for withholding of removal and CAT protection, we deny Mompongo's petition.

## I. BACKGROUND

Mompongo arrived in the United States from the DRC, formerly Zaire, on March 12, 1997, on a temporary work visa that authorized him to remain in the United States until June 30, 1999. He overstayed his visa, and, on February 21, 2001, Mompongo applied for asylum. The Immigration and Naturalization Service commenced removal proceedings on August 14, 2001.

At an initial hearing, Mompongo admitted the factual allegations contained in the notice to appear; conceded removability; and applied for asylum, withholding of removal, and protection under the CAT. The IJ held an evidentiary hearing, during which Mompongo presented no witnesses other than himself. Mompongo testified he fears persecution if he returns to the DRC, because of his family's associations with the former Mobutu regime, and because of his participation in the youth wing of the Mobutu party.

The IJ concluded Mompongo failed to file his application for asylum within one year of his arrival in the United States, and no changed or exceptional circumstances justified an exception to the one-year requirement. Therefore, the IJ denied as untimely Mompongo's asylum application. The IJ also denied Mompongo's claims for withholding of removal and CAT protection, but granted his request for voluntary

departure. The BIA affirmed without opinion. Therefore, for purposes of judicial review, the IJ's decision constitutes the final agency determination. See Aden v. Ashcroft, 396 F.3d 966, 967 n.1 (8th Cir. 2005).

## II. DISCUSSION

Mompongo first challenges the IJ's determination that Mompongo failed to demonstrate changed or extraordinary circumstances excusing the late filing of his asylum application. To qualify for asylum, an alien must "demonstrate[] by clear and convincing evidence that the application has been filed within 1 year after the date of the alien's arrival in the United States." 8 U.S.C. § 1158(a)(2)(B). This provision, however, does not apply if the applicant can "demonstrate[] to the satisfaction of the Attorney General either. . .changed circumstances which materially affect the applicant's eligibility. . .or extraordinary circumstances" to justify the delay in filing the application. 8 U.S.C. § 1158(a)(2)(D). Section 1158(a)(3) provides "no court shall have jurisdiction to review" the Attorney General's determination under section 1158(a)(2).

Pursuant to section 1158(a)(2)(B), the IJ denied as untimely Mompongo's application for asylum. The IJ explained that Mompongo filed his application more than one year after arriving in the United States, and the IJ found no changed or extraordinary circumstances to excuse the delayed filing. The IJ's decision is not subject to judicial review. *See* 8 U.S.C. § 1158(a)(3); *Aden*, 396 F.3d at 968; *Ngure v. Ashcroft*, 367 F.3d 975, 989 (8th Cir. 2004).

Although we lack jurisdiction to review Mompongo's claim for asylum, we do have jurisdiction to review the denial of Mompongo's requests for withholding of removal and

protection under the CAT. *See Ngure*, 367 F.3d at 989, 992 (reviewing claims for withholding and CAT protection even though asylum application was untimely). To qualify for withholding of removal, Mompongo must show a clear probability his "life or freedom would be threatened in [the DRC] because of [his] race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1231(b)(3)(A). "In other words, an alien [seeking withholding of removal] must establish that it is more likely than not that he will suffer persecution." *Ngure*, 367 F.3d at 989. To qualify for protection under the CAT, Mompongo must "establish that it is more likely than not that he . . . would be tortured if removed to the proposed country of removal." 8 C.F.R. § 1208.16(c)(2). We will overturn the IJ's denial of withholding of removal or protection under the CAT only if the evidence is so compelling that no reasonable factfinder would have denied relief. *Ngure*, 367 F.3d at 989, 992.

The IJ determined Mompongo failed to establish it is more likely than not he would be harmed should he return to the DRC. The IJ found Mompongo's testimony credible and recognized the fall of the Mobutu government, to which Mompongo's family was well-connected, resulted in political unrest, civil unrest, and "the prospect of lower living standards under the new government" for family members of principal figures in the Mobutu administration. However, the IJ concluded Mompongo's family connections, including a cousin who was a member of the Mobutu bodyguard and another cousin who worked as a Mobutu journalist and now works for a rebel group, fail to establish it is more likely than not Mompongo would be harmed if he returned to the DRC. Also considering the current conditions in the DRC, the IJ found it unlikely Mompongo, as a relative of Mobutu supporters, would face a clear probability of harm.

We conclude substantial evidence supports the IJ's findings. *See Ngure*, 367 F.3d at 989 (upholding findings if supported by substantial evidence). The evidence does not compel a reasonable factfinder to find Mompongo eligible for withholding of removal or protection under the CAT. The record contains no evidence showing any of Mompongo's remaining family members in the DRC have been physically harmed since the change in government, and no evidence indicates Mompongo would be harmed based upon his family's political connections or his political opinions. Mompongo also offered nothing to suggest he would be tortured should he return to the DRC. The State Department reported it was "not aware of family members of former principal figures in the Mobutu administration being mistreated by the [new] government." Thus, we affirm the denial of withholding of removal and protection under the CAT.

## III. CONCLUSION

We deny Mompongo's petition for judicial review.

## APPENDIX B

U.S. Department of Justice
Executive Office for Immigration Review
Falls Church, Virginia 22041

File: A79-263-058 - BLOOMINGTON

In re: MOMPONGO, BOKOLE ELONGO

IN REMOVAL PROCEEDINGS
APPEAL

### DECISION OF THE BOARD OF IMMIGRATION APPEALS

ORDER:

PER CURIAM. We adopt and affirm the decision of the Immigration Judge. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994) (noting that adoption or affirmance of a decision of an Immigration Judge, in whole or in part, is "simply a statement that the Board's conclusions upon review of the record coincide with those the Immigration Judge articulated in his or her decision"). The respondent's application for asylum was not adjudicated insofar as he failed to meet the statutory deadline requisite to making application for that relief. The respondent failed to meet his burden of proof in order to be afforded withholding of removal to the Democratic Republic of Congo or relief pursuant tot he Convention Against Torture. Accordingly, the appeal is dismissed.

FURTHER ORDER: Pursuant to the Immigration Judge's order and conditioned upon compliance with conditions set forth by the Immigration Judge and the statute, the alien is permitted to voluntarily depart from the United States, without expense to the Government, within 30 days from the date of this order or any extension beyond that time as may be granted by the district director. *See* section 240B(b) of the Immigration and Nationality Act; 8 C.F.R. §§ 1240.26(c), (f). In the event the alien fails to so depart, the alien shall be removed as provided in the Immigration Judge's order.

NOTICE: If the alien fails to depart the United States within the time period specified, or any extensions granted by the district director, the alien shall be subject to a civil penalty of not less than $1,000 and not more than $5,000, and shall be ineligible for a period of 10 years for any further relief under section 240B and sections 240A, 245, 248, and 249 of the Immigration and Nationality Act. *See* section 240B(d) of the Act.

/s/_____
FOR THE BOARD

## APPENDIX C

**UNITED STATES DEPARTMENT OF JUSTICE**
**EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**
**IMMIGRATION COURT**
**7850 Metro Parkway, Suite 320**
**Bloomington, MN 55425**

**Case A79-263-058**

**In the Matter of**
**Bokole Elongo Mompongo**

**IN REMOVAL PROCEEDING**

**ORDER OF THE IMMIGRATION JUDGE**

This is a summary of the oral decision entered on 12/11/2002. This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

X Respondent's application for voluntary departure was granted until February 10, 2003 upon posting a bond in the amount of $500.00 with an alternative order of removal to Dem. Rep. of Congo.

X Respondent's application for assylum was denied.

X Respondent's application for withholding of removal was denied.

X Respondent's application for withholding removal under Article III of the Convention Against Torture is denied.

X Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.

X Other: Respondent must present currently-valid passport to INS by 2/10/03 to be eligible for voluntary departure.

Date: 11/11/02

Appeal Due By: January 10, 2003

/s/_____
Joseph Dierkes, Immigration Judge